Supreme Court, U.S.
FILED

03-607 OCT 16 2003

OFFICE
Case #_____

IN THE
Supreme Court of the United States

STANFORD L. SIPPLE
Petitioner

Vs.

THE OFFICE OF CHIEF DISCIPLINARY COUNSEL
FOR THE MISSOURI SUPREME COURT
Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
MISSOURI SUPREME COURT

PETITION FOR WRIT OF CERTIORARI

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45 pp

Questions presented for review: Attorney Discipline case

Whether the Missouri Supreme Court denies an attorney subject to reciprocal discipline from another jurisdiction due process of law when the ethical rules in the reciprocating state do not substantially match those rules used in the originating state.

Whether the Missouri Supreme Court denies an attorney subject to reciprocal discipline from another jurisdiction due process and equal privileges and immunities when some of the originating state's ethical rules are absent from the attorney ethics rules in the reciprocating state.

Whether the Missouri Supreme Court in an attorney reciprocal discipline case denies due process of law when the originating state court's decision violated the attorney's first amendment rights and uncharged misconduct lead to punishment in the originating state.

Parties to the Proceedings

The Petitioner, admitted to practice law in Missouri with non-resident status, and the Office of Chief Disciplinary Counsel for the Missouri Supreme Court (hereinafter OCDC), the enforcement authority for attorney discipline in Missouri, were the identical parties in the Missouri Supreme Court.

Citation to Decision below

The style of the case in the Missouri Supreme Court is In re Stanford L. Sipple, Case #SC85335. The Missouri Supreme Court order is not published. The decision from Nebraska the originating state is State ex rel Counsel for Discipline v. Sipple, #S02-460, located in the official Nebraska Reports at 265 Neb. 890 (5/9/2003); the citation in the Northwestern Reporter, 2nd series is 660 NW2d 502.

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PETITION FOR WRIT OF CERTIORARI

The Petitioner requests a writ of certiorari from this Court to the Supreme Court of Missouri for the constitutional issues arising therein.

Jurisdictional Statement

The date of the written decision and order for which Petitioner seeks review was July 22, 2003.

The basis for jurisdiction of this Court is: 28 U.S.C. §1257(a). The petitioner seeks review of a final ruling of the highest court of the State of Missouri in this proceeding under the original jurisdiction of the Missouri Supreme Court.

Constitutional Provisions, Treaties, Statutes, Ordinances, And Regulations Involved In This Case:

This case involves the free speech clause of the 1st Amendment, the due process and equal protection clauses of the 14th Amendment (Section 1) and the "privileges and immunities" clause of Article IV Section 2, Clause 1 to the Constitution of the United States.

This case further involves the following attorney conduct rules for the Missouri Bar and Judiciary: Missouri Rules of Professional Conduct 4-1.2(a); 1.3; 8.4(a) & (d); Rules on Complaints, Rule 5.20

As this case involved reciprocal attorney discipline it also involves the following disciplinary rules from the Code of Professional Responsibility of the Nebraska Supreme Court (modeled from the ABA Model Code of Professional Responsibility, hereinafter "DR's": DR1-102(1), (5) and (6); DR 7-101(A)(3); and DR 7-105

Petitioner reproduces these provisions in the Appendix, post

Statement Of The Case

Petitioner seeks a writ of certiorari from this court to the Supreme Court of Missouri for this case involving its finding misconduct and ordering discipline against the Petitioner, a non-resident member of the Missouri Bar. The Missouri Supreme Court imposed reciprocal discipline on the Petitioner identical to that he received from the Nebraska Supreme Court but in violation of the preceeding provisions of the Constitution.

Summary of facts: The Missouri Supreme Court on July 22, 2003 suspended the Petitioner with no right to apply for reinstatement for two years following nearly identical discipline the Nebraska Supreme Court imposed on the Petitioner. See State ex rel Counsel for Discipline v. Sipple, 265 Neb. 890, 660 NW2d 502 (5/9/2003) (A1).

The originating case against Petitioner arose from a dispute between the Petitioner and his former client in a worker compensation case. The Petitioner's client agreed to settle his case before trial but changed his mind afterward. The client obtained new counsel who continued the case and settled before a postponed trial date (Sipple, id., 265 Neb. at 891-92)

Nebraska's Counsel for Discipline accused the Petitioner of using improper tactics to pressure the client to accept a settlement.

The Nebraska Supreme Court found that driving out to see the client, threatening to notify defense counsel that the clients had rescinded their settlement agreement, asking whether the client needed a guardian because he had abruptly reconsidered settlement and because it appeared his wife was interfering with his

case violated certain DR's of the Nebraska Code of Professional Responsibility (hereinafter Code) namely DR1-102(5) and (6) {conduct prejudicial to the administration of justice and reflecting adversely on the attorney's fitness to practice law}. That Court further found that communicating with opposing counsel after termination of the representation that the Petitioner did not want the client to get more money; questioning the client's veracity in an email brief to the judge, and that threatening criminal prosecution for misstatements the client had made to some of his discovery requests violated certain DR's of the Code, namely DR7-101(A)(3) {prejudice or damage a client during the course of the professional relationship} and DR7-105 {threatening criminal prosecution} (modeled after the American Bar Association Model Code of Professional Responsibility) (Sipple, id., 265 Neb. 890-902)

The Nebraska Supreme Court did not find the Petitioner guilty of nor did the Counsel for Discipline allege fraud, deceit, conflict of interest, extortion, disclosing or using client secrets or confidences against the client, neglect or incompetence.

Throughout the fee litigation between the Petitioner and his former client's succeeding counsel the Petitioner represented himself.

The Nebraska Supreme Court further found that the Petitioner's comments to the employer's counsel after Petitioner was fired that he did not want the client to get more money than the defense counsel had already offered violated DR7-101(A)(3). Again however the formal charges contain no allegations of this (Formal charges, app. A17)

The Nebraska Supreme Court suspended the Petitioner for two years finding misconduct as above and finding that the Petitioner had twice previously been repri-

manded. Sipple, supra 265 Neb. at 902.

Summary of Proceedings in State Court

The Missouri Supreme Court in accordance with Rule 5.20 of the Rules Governing the Missouri Bar and Judiciary, issued an order on the Petitioner to show cause why he should not be disciplined in Missouri following his Nebraska suspension. The Petitioner responded. On July 22, 2003 the Missouri Supreme Court imposed identical discipline on the Petitioner, indefinite suspension with no leave to apply for reinstatement for two years.

The Missouri Supreme Court wholly adopted the judgment of the Nebraska Supreme Court, but since the Missouri Supreme Court's rules for attorney conduct take the newer ABA Model Rules of Professional Conduct it found that Petitioner's violations of DR1-102(1),(5),(6); DR7-101(A)(3); DR7-105) modeled after dated ABA Model Code of Professional Responsibility would amount to violations of Missouri Model Rules 4-1.2(a); 1.3, 8.4(a) and (d).

Similarly the Missouri Supreme Court declined to address Petitioner's constitutional objections to the Nebraska Supreme Court decision, namely his first amendment and due process claims.

Finally the Missouri Supreme Court imposed discipline even though Nebraska punished the Petitioner primarily for uncharged misconduct, namely breaching an attorney's post termination duty of loyalty by asking defense counsel not to increase his settlement offer and failing to communicate certain settlement demands the client wished to make. Sipple, Id, 265 Neb at 891, 896.

Petitioner has sought a writ of certiorari from this Court to the Nebraska Supreme Court, filed on

September 8, 2003 as Case #03-405

Argument

1. THE U.S. SUPREME COURT SHOULD REVIEW THE ENTIRE OPINION OF THE ORIGINATING COURT TO DETERMINE WHETHER ITS RECIPROCAL APPLICATION IN ANOTHER JURISDICTION INFRINGES UPON FIRST AMENDMENT AND DUE PROCESS RIGHTS

In the First Amendment context, reviewing courts have a duty to engage in a searching, independent factual review of the full record. **New York Times Co. v.Sullivan,** 376 U.S. 254, 285 (1964));

This Court has an obligation to examine the whole record to ensure "that the judgment does not constitute a forbidden intrusion on the field of free expression." **Bose Corp. v. Consumers Union of U.S., Inc.,**466 U.S. 485, 499 (1984) (citing **New York Times Co. v. Sullivan,** 376 U.S. 254, 284- 286 (1964); **NAACP v. Claiborne Hardware, Co.,** 458 U.S. 886, 933-934 (1982)

The Nebraska Supreme Court's review of Petitioner's first amendment issues was at best cursory, circular and restricted solely to whether the first amendment presented a defense to the Disciplinary Counsel's charges against the Petitioner for violating DR7-101(a)(3) {prejudice or damage to a client during the course of the professional relationship}. The Nebraska Supreme Court likewise failed to address any other constitutional arguments the Petitioner sought to make.

The reciprocal attorney discipline action against a Missouri Bar member is an original action in the Missouri Supreme Court. Missouri Court Rule 5.20.

As this is the case, this Court should review the entire case for violations of free speech, for overbroad and vague legislation, notwithstanding the Nebraska Supreme Court's declining to apply the first amendment to each charge against the Petitioner. See ***Konigsberg v. State Bar of California*** 353 US 252 (1957){Supreme Court would review constitutional challenges raised in action initiated in highest state court}.

Konigsberg further allows this Court's reviewing Petitioner's due process claims, discussed below, although the Court's decision does not appear to discuss Petitioner's due process objection.

This Court in the reciprocal discipline case ***Theard v. United States*** 354 US 278 (1957) noted that attorney discipline in one jurisdiction might not be conclusive of misconduct in another jurisdiction when reciprocating discipline would result in a deprivation of due process, a grave injustice or other reason justifying substantially different discipline. ***Theard,*** Id.354 US at 282. Missouri like other states, adopted the ***Theard*** rule, see eg., In re: ***Weiner*** 530 S.W.2d 222 (1975) and In re ***Veach,*** 365 Mo. 776, 287 S.W.2d 753, 759 (banc 1956) {follows ***Theard*** policy of no automatic discipline}.

2. MISSOURI MODEL RULES DO NOT PROSCRIBE PETITIONER'S CONDUCT THE NEBRASKA SUPREME COURT FOUND VIOLATED CODE DR7-101(A)(3), PREJUDICING THE CLIENT DURING THE COURSE OF THE PROFESSIONAL RELATIONSHIP.

The Nebraska Supreme Court disciplined the Respondent largely upon finding that even though much of Respondent's alleged misconduct occurred after his client fired him but while his worker compensation claim was pending would still be "during the course of the professional relationship." Sipple, supra 265 Neb. at 899, citing ***In re Adams,*** 293 Or. 727, 652

P.2d 787 (Or. 1982). The Nebraska Supreme Court did not provide any definite duration for an attorney's professional relationship with a client. Id.

However under Missouri's version of the ABA Model Rules, Respondent could not be convicted under any comparable rules that had absorbed the Code's 7-101(A)(3). The Missouri Supreme Court has noted that Model Rules 1.3 {diligent representation} and 1.4 {prompt communication with client} constitute Missouri's former DR7-101(A)(3). In Re: ***Staab,*** 785 S.W.2d 551, fn2 (1990).

Even prior to 1986 when the Missouri Supreme Court still used the ABA Code, it had on a number of occasions when considering charges against an attorney for violating its identical DR7-101(A)(3) insisted that the OCDC prove an attorney client relationship existed. See, e.g. In re ***Disney*** 922 S.W.2d 12 (Mo. 1996) In re ***Smith*** 749 S.W.2d 408, 413 (Mo.1988) {improprieties alleged during business transactions between attorney and former client not subject to DR7-101(A)(3).

Nebraska's DR7-101(a)(3) case against Respondent had nothing to do with his diligence or how reasonably informed he kept his client informed.

However where the Nebraska Supreme Court concluded that since there are specific rules dealing with former clients, there must be a general ethical duty of loyalty to a former client, decisions from states adopting the Model Rules have reached the opposite conclusion.

For example the Utah Supreme Court held in ***Roderick v. Ricks*** 54 P.3d 1119, 2002 UT 84 (2002) that an attorney's "duty of loyalty" to a former client derived from Model Rules depends solely on existence of adverse representation in a substantially related matter. Appellate courts in Louisiana and Georgia that

have also adopted the Model Rules recognized that an attorney's duty of loyalty to avoid conflicts of interest does not prevent an attorney's self representation in a matter adverse to a former client's interests. See, e.g., ***Farrington v. The Law Firm Of Sessions, Fishman Et Al*** 687 So.2d 997 (La. 1997) and ***Johnston v. Aderhold,*** 216 Ga. App. 487, 455 S.E.2d 84 (1995). Both cases held that notwithstanding the attorney duty to avoid conflicts of interest, they could represent themselves even when the subject matter of the litigation would otherwise conflict with a present or former clients representation. ***Farrington,*** supra 687 So.2d at 1002; ***Johnston,*** id., 455 S.E.2d at 86.

Missouri has already decided cases using similar reasoning that the Model Rules do not incorporate a generalized "duty of loyalty" to former clients beyond the specific regulations of conflicting interests and confidentiality. See ***Williams v. Preman*** 911 SW2d 288 (Mo.App. WD 1995) overruled on other grounds ***Klemme v. Best*** 941 SW2d 493 (MO. 1997) {attorney's fiduciary duty of loyalty to former client does not derive from ethics rules}. In ***Williams,*** supra 911 SW2nd 288, a former client sued his attorney for in part offering testimony in the former client's bankruptcy case that the client claimed was adverse to his interests Id.911 SW2d at 293. The attorney denied the client had a claim for breach of fiduciary duty because the client had waived his attorney client privilege and could not make a case for breach of fiduciary duty derived from violations of the Model Rules of Professional Conduct. Id., 911 SW2d at 300. The Missouri Appellate Court noted that the defendant Attorney correctly asserted that as a matter of law attorneys in Missouri could not be held liable for breaching ethical rules. Id., 911 SW2d at 300 (citation omitted).

The former Client however was not seeking to hold the

attorney liable for the violation of an ethical rule. Instead the former client sought to hold attorney liable for a tortious breach of fiduciary duty, which could extend beyond termination of the attorney client relationship. Id., 911 SW2d at 301.

Thus while Missouri tort law held attorneys accountable for their loyalty to former clients, such duty did not derive from the Model Rules. Id., 911 SW2d at 301

Even if Respondent's conduct in pursuing his fee litigation while the client's underlying worker compensation claim was pending, disparaging the client but not revealing secrets to the defense counsel, questioning the client's credibility in an email brief to the worker compensation judge concerning a discovery dispute did violate Nebraska's "codified" duty of loyalty to former clients, the same conduct would not violate Missouri's Model Rules 1.3, 1.4 or any other ethical rule.

3. THE MISSOURI SUPREME COURT DECISION ON THIS GROUND VIOLATES THE PETITIONER'S DUE PROCESS AND PRIVILEGES AND IMMUNITIES RIGHTS.

Missouri's punishing the Petitioner for conduct that it would not hold an attorney going through its own disciplinary system accountable violates the Petitioner's right to equal application of a states laws under the privileges and immunities clause of Article IV, Section 2, clause 1 of the Constitution.

Supreme Court Of New Hampshire V. Piper, 470 U.S. 274 (1985) holds that the privileges and immunities clause guarantees to citizens of State A the right to do business in State B on terms of substantial equality with the citizens of that State. Piper, supra 470 US at 279, citing ***Toomer v. Witsell,*** 334 U.S. 385, 396 (1948).

Moreover, a nonresident's interest in practicing law is a "privilege" protected by the Clause. ***Piper,*** supra 470US at 279-283.

The Missouri Supreme Court may discriminate against Petitioner, a nonresident bar member only where the reasons for it are substantial and the difference in treatment bears a close or substantial relationship to those reasons. Id., 470 US at 284.

The Missouri Supreme Court did not even bother to offer any reason why the Petitioner should be punished for conduct that it would not on its own have imposed discipline. The Missouri Supreme Court could possibly have wanted to prevent misleading the public by allowing an attorney disciplined in a bordering state to continue to practice in good standing in Missouri, Cf. Piper, 470 US at 285-86, however that rationale flies in the face of the Missouri Court's own precedents in which it insists on the right to determine on its own the qualifications of its lawyers. Cf. ***Weiner*** supra 530 SW2d 22

4. "THREATENING CRIMINAL PROSECUTION SOLELY TO GAIN AN ADVANTAGE IN A CIVIL MATTER" IS NOT AN ETHICAL VIOLATION WITHIN THE MISSOURI MODEL RULES.

While the Code in DR7-105 prohibited threatening criminal prosecution solely to gain an advantage in a civil matter, Courts and commentators have noted its intentional omission from the Model Rules. See e.g., ***West Virginia Committee on Legal Ethics v. Printz,*** 416 SE2d 720 (1992) citing Hazard and Hodes, **The Law of Lawyering, A Handbook on the Model Rules of Professional Conduct,** §4.4:103 (Prentice Hall Law & Business 1990) {DR7-105 not incorporated into Model Rules due to being vague and out-dated}

Missouri as a Model Rules state most likely would fol-

low their lead and find no equivalent violation under the Rules, especially since the former DR7-105 was hardly ever enforced from published decisions. See ***In The Matter Of Buford*** 577 S.W.2d 809 (1979) {judicial discipline matter; only reported Missouri decision enforcing former code rule DR7-105}.

5. MISSOURI COULD NOT IMPOSE RECIPROCAL DISCIPLINE FROM A STATE HAVING SUCH A RULE

Again in imposing reciprocal discipline on the Petitioner when the Nebraska Supreme Court found a violation of DR7-105 when Missouri did not forbid the conduct violates the Petitioners privileges and immunities guaranteed to him under US Constitution Article IV, Section 2, Clause 1. ***Piper,*** supra 470 US 274.

6. THE MISSOURI SUPREME COURT'S RELIANCE UPON UNCHARGED ALLEGATIONS IN DISCIPLINING THE PETITIONER VIOLATED DUE PROCESS

The Nebraska Supreme Court based its punishment substantially on two referee's findings that the Counsel for Discipline failed to allege in its formal charges. The first finding of uncharged misconduct involved the Petitioner's refusal to make a settlement demands to the employer's counsel of $185,000 or $165,000 (Sipple, supra 265 Neb. at 891-92). The second allegation of uncharged misconduct involved Petitioner's contacting employer's counsel after withdrawing to ask the defense counsel not to settle the case for greater than $150,000 (Id. 265 Neb. at 892).

The Missouri Supreme Court saw fit to piggy-back onto the Nebraska Supreme Court decision that disregarded this Court's decision ***In re Ruffalo,*** 390 U.S. 544, 550 (1968) that attorney disciplinary proceedings, being of a quasi-criminal nature must present the charges before the proceedings commence. Uncharged

misconduct becomes a trap when, after proceedings are underway, the charges are amended on the basis of testimony of the accused. ***Ruffalo,*** id. 390 US at 550. Just as in ***Ruffalo's*** case, petitioner had no notice that either of these matters would be considered a disbarment offense until well after trial had begun. How the charge would have been met had it been originally included in those leveled against petitioner by the Nebraska Supreme Court Counsel for Discipline, much less the Missouri Chief Disciplinary Counsel, no one knows. Cf. ***Ruffalo, id.*** 390 U.S. at 550-51.

The Missouri Supreme Court's reliance on this uncharged misconduct amounts to an even graver deprivation of Petitioner's due process rights when the Missouri Court found that Petitioner's conduct amounted to failing to follow a client's instructions, in violation of Missouri rule 4-1.2(a).

CONCLUSION

For the reasons stated above the Petitioner requests the Court issue a writ of certiorari.

Respectfully submitted
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APPENDIX

Order of the Supreme Court of Missouri

Supreme Court of Missouri
En banc July 22, 2003

In Re:
Stanford L. Sipple, Respondent,
Supreme Court
No.SC85335; MBE#38590

ORDER

The Chief Disciplinary Counsel having filed an information for show cause order and motion for discipline pursuant to Rule 5.20 advising this Court of its finding, after investigation that Respondent, Stanford L. Sipple, had been suspended from the practice of law in the State of Nebraska pursuant to the opinion of the Nebraska Supreme Court in Case. NO. S-02-460, on May 9, 2003; and

Said discipline was the result of violations of the Nebraska Rule of Professional Conduct, said conduct being a violation of rules 4-1.2(a), 4-1.3, and 4-8.4(a) and 4-8.4(d) of the Missouri Rules of Professional Conduct; and On June 10, 2003, this Court issued a show cause order to Respondent and Respondent filed a response to the same on July 9, 2003.

Now therefore, it is ordered by the Court that the motion for discipline is sustained and that Respondent, Stanford L. Sipple, is suspended from the practice of law in this state and that no application for reinstatement shall be entertained by the Court for a period of two years from the date of this order.

It is further ordered that the Respondent, Stanford L. Sipple, comply in all respects with Rule 5.27-Notification of Clients and Counsel.

Costs taxed to Respondent.

Day-to-Day

S/_____
Duane Benton Acting Chief Justice

Opinion of the Nebraska Supreme Court
State of Nebraska
ex rel.
Counsel for Discipline of the Nebraska
Supreme Court, Relator, v.
Stanford L. Sipple,
Respondent.

State ex rel. Counsel for Dis. v. Sipple,
265 Neb. 890
Filed May 9, 2003. No. S-02-460.

1. Disciplinary Proceedings: Proof: Appeal and Error. A proceeding to discipline an attorney is a trial de novo on the record, in which the Nebraska Supreme Court reaches a conclusion independent of the findings of the referee; provided, however, that where the credible evidence is in conflict on a material issue of fact, the court considers and may give weight to the fact that the referee heard and observed the witnesses and accepted one version of the facts rather than another.
2. Disciplinary Proceedings: Proof. To sustain a charge in a disciplinary proceeding against an attorney, a charge must be established by clear and convincing evidence.
3. Attorneys at Law. An attorney is expected to use legal means to enforce his or her rights, not violent threats.
4. ____. Hostile, threatening, and disruptive conduct reflects on an attorney's honesty, trustworthiness, diligence, and reliability.
5. Constitutional Law: Attorneys at Law. Assertions of an attorney's right to free speech require a delicate balancing of the interests in upholding the integrity of our judicial system and in protecting the right of an attorney to free expression.

6. Attorney and Client. There is a distinction between professional employment and professional relationship. A lawyer owes a duty to a client in the context of a professional relationship long after the professional employment has terminated.
7. Disciplinary Proceedings. The basic issues in a disciplinary proceeding against a lawyer are whether discipline should be imposed and, if so, the type of discipline appropriate under the circumstances.
8. ____. Each case justifying discipline of an attorney must be evaluated individually in light of the particular facts and circumstances of that case.
9. ____. To determine whether and to what extent discipline should be imposed in a lawyer discipline proceeding, we consider the following factors: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance and reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the respondent generally, and (6) the respondent's present or future fitness to continue in the practice of law.
10. ____. Cumulative acts of attorney misconduct are distinguishable from isolated incidents, therefore justifying more serious sanctions.
Original action. Judgment of suspension.
Kent L. Frobish, Assistant Counsel for Discipline, for Relator.
Robert B. Creager, of Anderson, Creager & Wittstruck, P.C., for respondent.
Hendry, C.J., Wright, Connolly, Gerrard, McCormack, and Miller-Lerman, JJ.
Per Curiam.
I. NATURE OF CASE
This is an action brought by the Counsel for Discipline of the Nebraska Supreme Court seeking the imposition of discipline against respondent, Stanford L. Sipple, a member of the Nebraska State Bar Association. Respondent was formally charged with violating cer-

tain disciplinary rules and his oath of office as an attorney in connection with his representation of Brian Husted. A hearing was held, and the referee found that respondent had violated the Code of Professional Responsibility. The referee made no finding as to whether respondent had violated his oath as an attorney. See Neb. Rev. Stat. § 7-104 (Reissue 1997). The referee recommended that respondent be suspended from the practice of law for 1 year. Respondent filed exceptions to the referee's report. Following our de novo review of the record, we agree with the referee's findings of fact and conclusions of law. We also conclude respondent violated his oath of office as an attorney. We reject the referee's recommended 1-year suspension and instead suspend respondent from the practice of law for 2 years.

II. STATEMENT OF FACTS

The substance of the referee's findings, with which we agree, may be summarized as follows: On November 14, 1998, respondent entered into a fee agreement to represent Brian in a workers' compensation claim against Duncan Aviation. Brian had allegedly sustained a serious head injury arising out of and in the course of his employment. Respondent filed a workers' compensation lawsuit on behalf of Brian against Duncan Aviation, and the matter was scheduled to go to trial on March 2, 2001. Immediately prior to trial, the parties engaged in settlement discussions. The referee found that during these negotiations, respondent "failed, despite the request of [Brian], to put a settlement demand of $185,000.00 or $165,000.00 to the [employer's] attorney." Apparently, the parties arrived at the figure of $150,000 to resolve the case. Cheryl Husted, Brian's wife, claims, however, that immediately after reaching this figure, she and Brian advised respondent that they did not want to settle the case for $150,000. Cheryl claims respondent advised her that there was nothing that could be done. The referee concluded that the Husteds "felt that they were pressured

to accept the $150,000.00 settlement."

On March 15, 2001, Brian was given a copy of the settlement documents by respondent's office. On March 16, Cheryl advised respondent that Brian needed more time to review the paperwork. In his report, the referee stated that Cheryl's request for more time "incensed [respondent, who] insisted that the settlement documents be executed by the Husteds and returned to his office later [that same day] or he would take steps to nullify the settlement." The referee found that on March 16, respondent left a telephone message for Brian, stating, "'I'll give you this one last chance. You be in here on Monday [March 19, 2001] before twelve noon and ready to sign these documents or I will go to [Duncan Aviation's attorney.] This is your last chance.'"

Also on March 16, 2001, respondent advised Cheryl that he was driving to the Husteds' house to speak with Brian directly, despite Cheryl's request that respondent not do so because Brian was ill. Later that same day, respondent drove to the Husteds' home and confronted Brian about the settlement documents. The referee's report stated that during their conversation, respondent "became abusive," inquiring whether Brian needed a guardian and challenging Brian to settle the case "'like a man.'" The referee reported that "[a]ll of this, to say the least, was upsetting to the Husteds."

On March 19, 2001, the Husteds terminated their employment of respondent and hired a new attorney to handle Brian's workers' compensation claim. Thereafter, respondent took several actions which the referee determined could "only be described as a campaign to intimidate the Husteds and force an early payment of his [attorney] fee," even though there was no dispute about respondent's right to collect a fee. Despite the ongoing nature of Brian's workers' compensation claim, respondent scheduled the depositions of the Husteds. He also served them with requests for admissions. Additionally, on May 2, and again on May

17, respondent contacted Duncan Aviation's workers' compensation lawyer. The record reflects that in one conversation, respondent stated to Duncan Aviation's lawyer that "he did not want [Brian] to receive any more than $150,000 in settlement." Respondent also contacted by e-mail the workers' compensation judge assigned to Brian's case. According to the referee's report, in the e-mail, respondent stated to the judge that he saw "little harm that could be done to [Brian's] case by answering [respondent's] discovery [regarding attorney fees], other than his avoiding the truth.'"

In his report, the referee observed that respondent "took offense at a certain Response to [respondent's] Requests For Admissions supplied by [Brian] and his [new] lawyer." As a result of this "offense," respondent threatened to prosecute Brian for perjury. The record reflects that in a facsimile transmitted to the Husteds' new attorney, respondent wrote "I will pursue perjury because it is perjury. . . . Make truthful statements or I will take matter further."

On August 24, 2001, the Husteds' new attorney settled Brian's workers' compensation claim against Duncan Aviation for $200,000. On October 15, this new attorney filed a grievance with the Counsel for Discipline's office against respondent relating to respondent's actions involving the Husteds. On April 30, 2002, a single-count formal charge was filed against respondent alleging that as a result of his actions, respondent had violated the following disciplinary rules:

DR 1-102 Misconduct.

(A) A lawyer shall not:

(1) Violate a Disciplinary Rule.

. . . .

(5) Engage in conduct that is prejudicial to the administration of justice. . . .

(6) Engage in any other conduct that adversely reflects on his or her fitness to practice law.

DR 7-101 Representing a Client Zealously.

(A) A lawyer shall not intentionally:

. . . .
3) Prejudice or damage his or her client during the course of the professional relationship . . . .
DR 7-105 Threatening Criminal Prosecution.
(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.
(On June 7, respondent filed an answer to the formal charges, admitting certain of the allegations, but denying that he had violated either the disciplinary rules or his oath as an attorney.
On June 12, this court appointed a referee to serve in the case. A referee hearing was held on October 4, at which hearing evidence was adduced regarding the facts recited above and argument was presented. The record also discloses that respondent had been the subject of two prior reprimands.
On November 8, 2002, the referee filed his report and found by clear and convincing evidence that respondent had violated Canon 1, DR 1-102(A)(1), (5), and (6), and Canon 7, DR 7-101(A)(3) and DR 7-105(A). In his report, the referee also noted that respondent had been the subject of a prior disciplinary proceeding "for behavior of the same type." In one of the two prior disciplinary proceedings, respondent had received a private reprimand after leaving verbally abusive messages on his clients' answering machines when the clients indicated some concern with regard to a settlement respondent had negotiated. With respect to the sanction which ought to be imposed for the violations established by the record, and considering respondent's prior disciplinary history, the referee recommended that respondent be suspended from the practice of law in the State of Nebraska for 1 year. On November 18, respondent filed exceptions to the referee's report.
III. ASSIGNMENTS OF ERROR
In his brief, respondent assigns five errors, which we restate as four. Respondent claims, restated, that (1) the

evidence was insufficient as a matter of fact and law to support the conclusion that he violated DR 1-102(A)(5) and (6); (2) the evidence was insufficient as a matter of fact and law to support the conclusion that he violated DR 7-101(A), in part because certain statements respondent made were protected speech, privileged under the First Amendment to the U.S. Constitution and article I, § 5, of the Nebraska Constitution; (3) the evidence was insufficient as a matter of fact and law to support the conclusion that he violated DR 7-105(A); and (4) the punishment was excessive.

IV. STANDARD OF REVIEW

[1,2] A proceeding to discipline an attorney is a trial de novo on the record, in which the Nebraska Supreme Court reaches a conclusion independent of the findings of the referee; provided, however, that where the credible evidence is in conflict on a material issue of fact, the court considers and may give weight to the fact that the referee heard and observed the witnesses and accepted one version of the facts rather than another. State ex rel. NSBA v. Gallner, 263 Neb. 135, 638 N.W.2d 819 (2002). To sustain a charge in a disciplinary proceeding against an attorney, a charge must be established by clear and convincing evidence. State ex rel. Counsel for Dis. v. Petersen, 264 Neb. 790, 652 N.W.2d 91 (2002); State ex rel. Counsel for Dis. v. Brinker, 264 Neb. 478, 648 N.W.2d 302 (2002).

V. ANALYSIS

1. Violation of Disciplinary Rules and Attorney's Oath

(a) DR 1-102(A)(5) and (6)

For his first assignment of error, respondent challenges the referee's conclusion that respondent violated DR 1-102(A)(5) and (6). In his brief, respondent admits that his "final efforts to consummate the settlement and resolve the fee dispute [were] probably 'out of bounds.'" Brief for respondent at 7. Nonetheless, respondent argues that such conduct does not amount to "conduct that is prejudicial to the administration of justice," see DR 1-102(A)(5), or "conduct that adversely reflects on

[respondent's] fitness to practice law," see DR 1-102(A)(6). We disagree.

Initially, we note that respondent's prior disciplinary proceeding involving his leaving abusive messages on his clients' answering machines resulted in respondent's receiving a private reprimand for violating DR 1-102(A)(1), (5), and (6); the same rules respondent claims he did not violate in the instant case. We also note the similarity between respondent's conduct in his prior disciplinary proceeding and certain of the actions in which respondent engaged in the instant case.

Based on our de novo review of the record, it is clear that the record in the instant case contains overwhelming evidence that respondent was abusive to a client in an attempt to coerce the client into accepting a settlement which the client was not prepared to accept and in an attempt to collect an attorney fee. The record reflects that respondent left a threatening message on the Husteds' answering machine. The record also demonstrates that despite Cheryl's request that Brian be given more time to review the settlement documents, respondent stated that he would "nullify" the settlement if Brian did not execute the documents immediately. The referee found that respondent confronted Brian at his home, notwithstanding Cheryl's specific request that respondent not come to the house because Brian was too ill. During the confrontation which ensued, the record reflects that respondent verbally abused his own client who had sustained a severe head injury, threatened Brian that he needed a guardian, and challenged Brian to settle the case "like a man."

Respondent continued his abusive behavior, aggressively pursuing his claim to a legal fee that was not in dispute, at a time when Brian's workers' compensation case had not concluded. The referee found respondent's actions to be a "campaign to intimidate the Husteds." During this "campaign," the record reflects that respondent contacted Duncan Aviation's attorney,

stating that "he did not want [Brian] to receive any more than $150,000 in settlement." Respondent also contacted the judge assigned to hear Brian's workers' compensation case by e-mail and in that message, challenged Brian's willingness to tell the truth. The referee found that respondent threatened to prosecute Brian for perjury for a matter which respondent admitted had no bearing on his claim for an attorney fee. [3,4] We have previously stated that an attorney is expected to use legal means to enforce his or her rights, not violent threats. See State ex rel. Counsel for Dis. v. Lopez Wilson, 262 Neb. 653, 634 N.W.2d 467 (2001). In Lopez Wilson, the respondent engaged in a course of conduct in which he, inter alia, personally confronted his client at the client's home in a hostile manner, threatened his client that he would alert the court that the client had not been truthful, and contacted an opposing party with information potentially damaging to the client's case, all in an attempt, in part, to collect a legal fee. We concluded that the respondent's conduct had a negative effect on the public's perception of attorneys and the Nebraska State Bar Association in general. We further stated that "[w]ith regard to the protection of the public . . . "'courts have a duty to maintain public confidence in the legal system and to protect and enhance the attorney-client relationship in all its dimensions.'" Id. at 661, 634 N.W.2d at 474 (quoting State v. Hawes, 251 Neb. 305, 556 N.W.2d 634 (1996)). We determined that the respondent's threats undermined the confidential and fiduciary nature of the attorney-client relationship and lessened the public's confidence in the legal profession. We also stated that hostile, threatening, and disruptive conduct reflects on an attorney's honesty, trustworthiness, diligence, and reliability. We concluded that an attorney's conduct which includes progressively abusive language and threats "violate[d] disciplinary rules that prohibit engaging in conduct prejudicial to the administration of justice and engaging in conduct that

adversely reflects on one's fitness to practice law." Id. at 662, 634 N.W.2d at 475.

Based on our de novo review of the record, see State ex rel. NSBA v. Gallner, 263 Neb. 135, 638 N.W.2d 819 (2002), we conclude that the record in the instant case establishes by clear and convincing evidence that respondent engaged in conduct that was prejudicial to the administration of justice and that adversely reflected on respondent's fitness to practice law, in violation of DR 1-102(A)(1), (5), and (6).

(b) DR 7-101(A)(3)

For his second assignment of error, respondent challenges the referee's conclusion that respondent violated DR 7-101(A)(3) by engaging in conduct that was prejudicial or damaging to Brian during the course of the professional relationship. In support of this assignment of error, respondent raises two arguments. First, respondent claims that certain of his actions are protected by his federal and state constitutional rights to free speech, and thus cannot serve as a basis for an attorney disciplinary proceeding. Second, respondent claims that his actions involved a "former client," and thus, did not occur "'during the course of the professional relationship.'" Brief for respondent at 13. We find no merit to this assignment of error.

[5] Initially, we note that we have previously recognized that assertions of an attorney's right to free speech require "a delicate balancing of the interests in upholding the integrity of our judicial system and in protecting the right of an attorney to free expression." State ex rel. Nebraska State Bar Assn. v. Michaelis, 210 Neb. 545, 555, 316 N.W.2d 46, 52 (1982). Nonetheless, we have recognized that "instances can exist where an attorney's criticism or conduct would be impermissible and the subject of professional discipline." Id. at 556, 316 N.W.2d at 53. In Michaelis, we concluded that notwithstanding an attorney's claim that his conduct was protected by his constitutionally guaranteed right to free speech, the record demonstrated that the attor-

ney's statements were unethical and unprofessional and in violation of the Code of Professional Responsibility. In reaching this conclusion, we quoted Justice Stewart of the U.S. Supreme Court, who, in a concurring opinion speaking for five members of the Court, stated:

"If, as suggested by [Justice] Frankfurter, there runs through the principal opinion an intimation that a lawyer can invoke the constitutional right of free speech to immunize himself from even-handed discipline for proven unethical conduct, it is an intimation in which I do not join. A lawyer belongs to a profession with inherited standards of propriety and honor, which experience has shown necessary in a calling dedicated to the accomplishment of justice. He who would follow that calling must conform to those standards.

"Obedience to ethical precepts may require abstention from what in other circumstances might be constitutionally protected speech."

(Emphasis omitted.) Id. at 556-57, 316 N.W.2d at 53 (quoting In re Sawyer, 360 U.S. 622, 79 S. Ct. 1376, 3 L. Ed. 2d 1473 (1959) (Stewart, J., concurring)).

In the instant case, although we agree that respondent "[did] not surrender his freedom of expression upon becoming an attorney," we conclude that "upon admission to the bar [respondent] incur[red] the obligation to temper his [expression] in the manner allowed by the canons of professional ethics." See State ex rel. Nebraska State Bar Assn. v. Michaelis, 210 Neb. at 557, 316 N.W.2d at 53. Accordingly, we conclude there is no merit to respondent's claim that his behavior, if unethical, was protected by his constitutional rights to free speech.

[6] Respondent also claims that he could not have violated DR 7-101(A)(3) because certain of the conduct in which he engaged occurred after Brian had retained new counsel and that thus, the challenged conduct did not occur "during the course of the professional relationship." We disagree. It has been recognized that

there is a "distinction between 'professional employment' and 'professional relationship.' A lawyer owes a duty to a client in the context of a 'professional relationship' long after the 'professional employment' has terminated." See In re Adams, 293 Or. 727, 737, 652 P.2d 787, 792 (1982) (concluding attorney violated DR 7-101(A)(3) by filing declaratory judgment suit to set aside former client's workers' compensation award after client had terminated attorney's employment). In this connection, we have held that after the professional employment has terminated, an attorney generally has an ongoing obligation to maintain client confidences. See, generally, State ex rel. Counsel for Dis. v. Lopez Wilson, 262 Neb. 653, 634 N.W.2d 467 (2001). Furthermore, we have observed that notwithstanding the cessation of the attorney-client employment relationship, an attorney must avoid the present representation of a cause against a client that the attorney formerly represented, and which cause involves a subject matter which is the same as or substantially related to that formerly handled by that attorney. State ex rel. Wal-Mart v. Kortum, 251 Neb. 805, 559 N.W.2d 496 (1997). We conclude that respondent's ethical obligation not to engage in conduct that was prejudicial or damaging to Brian during the course of the professional relationship extended beyond the termination of respondent's employment relationship with Brian, and respondent's actions after Brian had secured new counsel can be considered when determining whether respondent violated DR 7-101(A)(3).

Based on our de novo review of the record, see State ex rel. NSBA v. Gallner, 263 Neb. 135, 638 N.W.2d 819 (2002), we conclude that the record in the instant case establishes by clear and convincing evidence that respondent engaged in conduct that was prejudicial and damaging to Brian during the course of the professional relationship, in violation of DR 7-101(A)(3). Among other actions, respondent deliberately contacted counsel for the opposing party in an attempt to min

imize the amount of the settlement Brian might receive in his workers' compensation case and contacted the judge scheduled to try Brian's workers' compensation claim and impugned Brian's willingness to tell the truth, all after the attorney-client employment relationship had ceased but while the attorney-client professional relationship was intact. Given this record, we find no merit to respondent's second assignment of error.

(c) DR 7-105(A)

For his third assignment of error, respondent claims that the referee erred in concluding that respondent engaged in conduct violating DR 7-105(A), which provides, inter alia, that a lawyer should not threaten to present criminal charges solely to obtain an advantage in a civil matter. Respondent does not deny that he threatened criminal prosecution against Brian as a result of Brian's response to a request for admissions propounded by respondent. Respondent asserts, however, that "the threat of criminal prosecution in this case was not made solely to gain an advantage in a civil proceeding." Brief for respondent at 16.

This argument is without merit. The allegedly perjured statement was made in the course of respondent's attempt to collect the legal fee which he felt was owed to him. Respondent's claim that "his intent was to give [Brian] an opportunity to retract that statement before it was relied upon in the official proceeding" is disingenuous. Brief for respondent at 16. The "official proceeding" referred to by respondent was a proceeding on his claimed attorney fee. In this regard, we note that respondent admitted during the hearing in this case that the purportedly perjured statement, having to do with Brian's assertion that he withdrew respondent's authority to settle the workers' compensation case for $150,000, had no bearing on respondent's entitlement to an attorney fee. Based on our de novo review of the record, see State ex rel. NSBA v. Gallner, supra, we conclude that the record in the instant case establish

es by clear and convincing evidence that respondent threatened to present criminal charges solely to obtain an advantage in a civil matter, in violation of DR 7-105(A).

(d) Violation of Attorney's Oath

Although the referee made no finding in this regard, we conclude that by virtue of respondent's conduct, we find by clear and convincing evidence that in addition to violating DR 1-102(A)(1), (5), and (6); DR 7-101(A)(3); and DR 7-105(A), respondent has violated the attorney's oath of office. See § 7-104.

2. Imposition of Attorney Discipline [7-9] We have stated that the basic issues in a disciplinary proceeding against a lawyer are whether discipline should be imposed and, if so, the type of discipline appropriate under the circumstances. State ex rel. Counsel for Dis. v. Brinker, 264 Neb. 478, 648 N.W.2d 302 (2002); State ex rel. Counsel for Dis. v. Rickabaugh, 264 Neb. 398, 647 N.W.2d 641 (2002). With respect to the imposition of attorney discipline in an individual case, we have stated that "[e]ach case justifying discipline of an attorney must be evaluated individually in light of the particular facts and circumstances of that case." State ex rel. NSBA v. Rothery, 260 Neb. 762, 766, 619 N.W.2d 590, 593 (2000). We have previously set out the factors which we consider in determining whether and to what extent discipline should be imposed:

To determine whether and to what extent discipline should be imposed in a lawyer discipline proceeding, we consider the following factors: (1) the nature of the offense, (2) the need for deterring others, (3) the maintenance and reputation of the bar as a whole, (4) the protection of the public, (5) the attitude of the respondent generally, and (6) the respondent's present or future fitness to continue in the practice of law.

State ex rel. Counsel for Dis. v. Thompson, 264 Neb. 831, 842, 652 N.W.2d 593, 601 (2002).

The evidence in the present case establishes, inter alia, that respondent acted so as to preserve his own inter-

ests at the expense of those of Brian. Respondent was verbally abusive to Brian and behaved in a manner which Brian found to be threatening. Respondent contacted opposing counsel and the court in a manner that was likely to be deleterious to his former client's interests. Respondent also threatened criminal prosecution solely for the purpose of gaining an advantage in a civil matter. Respondent's behavior demonstrates a disregard for Brian's interests and for the rules of professional conduct and responsibility.

[10] In assessing the appropriate discipline to be imposed in this case, we note that respondent has been the subject of two prior attorney discipline proceedings. In 1999, respondent was privately reprimanded for sending out advertising brochures to potential clients which contained a false or misleading statement. In 2000, respondent was again privately reprimanded, this time for leaving verbally abusive messages on his clients' answering machines when the clients indicated some concern with regard to a settlement respondent had negotiated; conduct which we have noted is similar to certain of respondent's actions in the instant case. We have held that cumulative acts of attorney misconduct are distinguishable from isolated incidents, therefore justifying more serious sanctions. See State ex rel. NSBA v. Frederiksen, 262 Neb. 562, 635 N.W.2d 427 (2001).

In the instant case, the referee recommended that respondent be suspended from the practice of law for a period of 1 year. Respondent claims on appeal that such a punishment is excessive. We disagree. To the contrary, we are of the opinion that the referee's recommendation of a 1-year suspension is too lenient and, if applied, would depreciate the seriousness of respondent's actions. See State ex rel. NSBA v. Gleason, 248 Neb. 1003, 540 N.W.2d 359 (1995). When we balance the need to protect the public, the nature of respondent's offenses, the need for deterring others, the reputation of the bar as a whole, and respondent's

prior discipinary proceedings against respondent's interest in preserving his privilege to practice law, we must conclude that the only appropriate judgment is to suspend respondent from the practice of law for a period of 2 years, effective immediately. we balance the need to protect the public, the nature of respondent's offenses, the need for deterring others, the reputation of the bar as a whole, and respondent's prior discipinary proceedings against respondent's interest in preserving his privilege to practice law, we must conclude that the only appropriate judgment is to suspend respondent from the practice of law for a period of 2 years, effective immediately.

VI. CONCLUSION

It is the judgment of this court that respondent be suspended from the practice of law for a period of 2 years, effective immediately, after which time respondent may apply for reinstatement. Respondent shall comply with Neb. Ct. R. of Discipline 16 (rev. 2001), and upon failure to do so, respondent shall be subject to punishment for contempt of this court. Accordingly, respondent is directed to pay costs and expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 1997) and Neb. Ct. R. of Discipline 23(B) (rev. 2001).

Judgment of suspension.

Stephan, J., participating on briefs.

Formal Charges of the Counsel for Discipline, Nebraska Supreme Court

IN THE SUPREME COURT OF THE STATE OF NEBRASKA Case #02-0460

STATE OF NEBRASKA,

ex rel.

COUNSEL FOR DISCIPLINE OF THE NEBRASKA SUPREME COURT, Relator, VS.

STANFORD L. SIPPLE,

Respondent.

FORMAL CHARGES

Comes now the Assistant Counsel for Discipline of the Nebraska Supreme Court and herewith states, alleges and shows as follows:

1. The respondent, Stanford L. Sipple, was duly admitted to the practice of law in the State of Nebraska on March 4,1991. The respondent's last known address is: 3701 "O" Street, Suite 202, Lincoln, Nebraska 68510.

2. At all times relevant to these proceedings the respondent was engaged in the private practice of law in Lincoln, Nebraska. Pursuant to Nebraska Supreme Court Rule of Discipline 2, the respondent is under the jurisdiction of the District One Committee on Inquiry.

3. The matters alleged herein have been reviewed by the District One Committee on Inquiry and said Committee has recommended Formal Charges be filed against the respondent.

4. On November 14,1998, Brian L. Husted hired respondent to represent him in his workers' compensation claim against his employer, Duncan Aviation. On that date he signed a fee contract whereby respondent was entitled to a fee of 25% of any settlement or court award. The contract also provided that Husted would be responsible for out-of-pocket costs. The contract set forth respondent's right to claim a lien on any settlement received by Husted in the event respondent was discharged as Husted's attorney.

5. The trial of Husted's case was scheduled for March 2, 2001, in the Nebraska Workers' Compensation Court. On March 1, 2001, Walter E. Zink, 11, the attorney for the employer made a settlement offer to respondent. Respondent contacted his client and negotiations ensued. Ultimately, Husted agreed to settle his case for a lump sum of $150,000. This agreement was communicated by respondent to the employer's lawyer and the court was notified of the settlement and cancellation of the trial. However, within a few minutes of

informing respondent that he accepted the settlement, Husted notified respondent that he did not want to accept the $150,000 settlement. Respondent informed Husted that it was too late to change his mind because respondent had already communicated his acceptance to the employer's lawyer and had informed the court that trial was canceled.

6. On March 15, 2001, respondent provided the settlement documents to Husted's wife, Cheryl Husted, with instructions that Husted should sign the agreement and return it to respondent immediately. Mrs. Husted told respondent that she would go over the documents with her husband and get back to him.

7. On Friday, March 16, 2001, respondent telephoned Cheryl Husted and told her that the documents had to be signed immediately and returned to his office. Mrs. Husted informed respondent that her husband was not feeling well and he would not be able to review the documents until the weekend and she would contact respondent on the following Monday. Respondent told Mrs. Husted that if Mr. Husted did not sign the settlement documents that day respondent would call the employer's lawyer and tell him that Husted had refused the settlement. Respondent stated that
he or his office staff would go the Husted home to get Mr. Husted's signature on the settlement documents. Cheryl Husted told respondent that Mr. Husted was not feeling well and that respondent should not go to their home.

8. Later on March 16, 2001, respondent went to the Husted home and confronted Mr. Husted about signing the settlement documents. Husted told respondent he did not feel up to going over the documents and that he would contact respondent on Monday. Respondent stated that if Husted did not sign the document by 4:00 p.m. that day, he would tell the employer's lawyer that the settlement was rejected. Husted told respondent not to take any action in the case until he contacted respondent on Monday, March 19, 2001.

9. On March 19, 2001, Husted notified respondent that he was terminated as Husted's attorney and that Husted had hired new counsel, John Guthery.
10. On March 20, 2001, respondent filed an application with the Workers' Compensation Court to determine his attorney fee, and set a hearing for April 18, 2001. He also wrote to Mr. Guthery asking to schedule the depositions of Mr. and Mrs. Husted to take testimony regarding his claim for attorneys fees.
11. On March 23, 2001, respondent served on Mr. Guthery a notice to take the deposition of Mr. Husted. The notice instructed Mr. Husted to produce a number of documents regarding his workers' compensation case. The lawyer for the employer was provided with notice of the deposition.
12. On March 27, 2001, Mr. Guthery filed with the Compensation Court a motion to quash the taking of Husted's deposition or in the alternative postponement of the deposition until after the underlying compensation claim had been resolved. On March 28, 2001, the Compensation Court ordered that respondent must wait until after Husted's underlying case is resolved before he may take Husted's deposition regarding his fee application.
13. On June 19, 2001, respondent served on Mr. Guthery requests for admissions propounded to Husted regarding respondent's claim for attorney's fees. On June 20, 2001, Mr. Guthery filed a motion to strike the requests for admissions or in the alternative to quash the requests for admissions. A hearing on Mr. Guthery's motion was set for July 18, 2001, before the Compensation Court.
14. In a letter from respondent dated July 13, 2001, to Compensation Court Judge Laureen Van Norman, respondent made the following statement: "I see little harm that could be done to the Plaintiff's case by answering my discovery, other than his avoiding the truth." It was inappropriate and prejudicial for respondent to make this derogatory statement regarding his

former client to the Judge who would hear and decide Mr. Husted's case.

15. On August 24, 2001, Husted settled his claim against his employer for a lump sum of $200,000, subject to Court approval.

16. On September 12, 2001, Husted served his answers to respondent's requests for admission. On September 14, 2001, respondent telephoned Mr. Guthery. During the conversation, respondent stated that Mr. Husted had not answered Request for Admission No. 11 truthfully. Mr. Guthery understood respondent to say that he intended to have Mr. Husted prosecuted for perjury if he did not change his answer to Request for Admission No. 11 and agree to 25% of $150,000 being paid to respondent as his attorney fee along with the cost respondent had incurred while representing Mr. Husted.

17. On September 17, 2001, respondent sent an email message to Mr. Guthery stating the following:

"1. Husted lied. Perjury is perjury, but I think the law requires the liar get a chance to retract his false statement. Time is now.

2. You owe me 25% of $150K plus the thousands I shelled out for you to cadillac a dog and pony show to the court. Like you said the lie on #11 migbht not matter that much to my entitlement to the fee i earned and Husted stole from me.

3. think youre trying to paint me into violating DR 7-105 so Husted and his wannabe atty wife can complain to your blow buddies at the disciplinary counsel? No - - but i think theres some rules there you might want to look at."

[errors in original unchanged]

18. On or about October 18, 2001, respondent filed with the Compensation Court a withdrawal of his motion for attorney's fees and lien with prejudice. On October 19, 2001, the Compensation Court sustained respondent's motion and ordered that respondent is not entitled to any attorney fee and discharged his lien.

19. The foregoing acts of the respondent constitute violations of his Oath of Office as an attorney and the following provisions of the Code of Professional Responsibility:

DR 1-102 Misconduct

(A) lawyer shall not:

(1)Violate a Disciplinary Rule.

(5) Engage in conduct that is prejudicial to the administration of justice.

(6) Engage in any other conduct that adversely reflects on his or her
fitness to practice law.

DR 7-101 Representing a Client Zealously

(A) A lawyer shall not intentionally:

(3) Prejudice or damage his or her client during the course of the professional relationship, except as required under DR 7-102(B).

DR 7-105 Threatening Criminal Prosecution

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.

Wherefore, the Assistant Counsel for Discipline of the Nebraska Supreme Court herewith files Formal Charges against the respondent, Stanford L. Sipple, a member of the Nebraska State Bar Association, and moves the Court to proceed herein in accordance with the Nebraska Supreme Court Rules of Discipline.

Dated this 30 day of April, 2002.

S/_____

Kent L. Frobish #17297 Assistant Counsel for Discipline Nebraska Supreme Court 3808 Normal Blvd Lincoln, Nebraska 68506 402-471-1040 kfrobish@nsc.state.ne.us

Constitutional and Statutory Provisions

United States Constitution

Article IV, Section 2, Clause 1 Constitution of the United States

The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

Amendment I Constitution of the United States

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XIV Section. 1 Constitution of the United States

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Missouri Bar and Judiciary, Rules of Professional

Conduct; Complaints and Proceedings

Rule 1.2 Scope of Representation

(a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision,

after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

Code Comparision

Rule 1.2(a) has no counterpart in the Disciplinary Rules of the Code. EC 7-7 states that "in certain areas of legal representation not affecting the merits of the cause or substantially prejudicing the rights of a client, a lawyer is entitled to make decisions on his own. But otherwise the authority to make decisions is exclusively that of the client. . . ." EC 7-8 states that "in the final analysis, however, the . . . decision whether to forego legally available objectives or methods because of nonlegal factors is ultimately for the client. . . . In the event that the client in a nonadjudicatory matter insists upon a course of conduct that is contrary to the judgment and advice of the lawyer but not prohibited by Disciplinary Rules, the lawyer may withdraw from the employment." DR 7-101(A)(1) provides that "a lawyer shall not intentionally . . . fail to seek the lawful objectives of his client through reasonably available means permitted by law. . . . A lawyer does not violate this Disciplinary Rule, however, by . . . avoiding offensive tactics. . . ."

Rule 1.3 Diligence
A lawyer shall act with reasonable diligence and promptness in representing a client.

Code Comparison

DR 6-101(A)(3) requires that a lawyer not "neglect a matter entrusted to him." EC 6-4 states that a lawyer should "give appropriate attention to his legal work." Canon 7 states that "a lawyer should represent a client zealously within the bounds of law." DR 7-101(A)(1) provides that "a lawyer shall not intentionally . . . fail to seek the lawful objectives of his client through reasonably available means permitted by law and the

Disciplinary Rules. . . ." DR 7-101(A)(3) provides that "a lawyer shall not intentionally . . . prejudice or damage his client during the course of the relationship. . . ."

Rule 8.4 Misconduct
It is professional misconduct for a lawyer to:

(a) Violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

(d) Engage in conduct that is prejudicial to the administration of justice.

Rule 5.20 Reciprocal Discipline for Misconduct

Upon the filing of an information directly in this Court by the chief disciplinary counsel that a lawyer admitted to practice in Missouri has been adjudged guilty of professional misconduct in another jurisdiction, this Court shall cause to be served on the lawyer an order to show cause why said adjudication should not be conclusive of said misconduct for the purpose of discipline by this Court.

Code of Professional Responsibility, Nebraska Supreme Court
DR 1-102 Misconduct.
(A) A lawyer shall not:
(1) Violate a Disciplinary Rule.
(2) Circumvent a Disciplinary Rule through actions of another.
(3) Engage in illegal conduct involving moral turpitude.
(4) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation.
(5) Engage in conduct that is prejudicial to the administration of justice. Once a lawyer is employed in a professional capacity, the lawyer should not, in the course of such employment, engage in adverse discriminatory

treatment of litigants, witnesses,lawyers, judges, judicial officers, or court personnel on the basis of the person's race, national origin, gender, or religion. This subsection does not preclude legitimate advocacy when these factors are issues in a proceeding.
(6) Engage in any other conduct that adversely reflects on his or her fitness to practice law.

DR 7-101 Representing a Client Zealously.
(A) A lawyer shall not intentionally:

(3) Prejudice or damage his or her client during the course of the professional relationship, except as required under DR 7-102(B).

DR 7-105 Threatening Criminal Prosecution.

(A) A lawyer shall not present, participate in presenting, or threaten to present criminal charges solely to obtain an advantage in a civil matter.